

App. No. 10/024,639
Amendment dated August 29, 2003
Response to Office action date June 2, 2003
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REMARKS

Applicants respond as follows to the June 2, 2003 Office action. Claims 1-5 and 18 stand rejected under 35 U.S.C. 102(e) for anticipation by U.S. Pat. No. 6,354,438 to Lee et al. ("Lee") Applicants respond as follows.

Amended claim 1 and claim 18 recite, among other elements, "a pattern recognition element programmed for analyzing said first image signal of said portion of said shielding element located between said first structural element and said second structural element to determine the location of said portion of said shielding element."

A general purpose device, when programmed in a particular way, becomes a new device, which is a different device from the same machine with different programming. The Federal Circuit held in In re Alappat: "We have held that such programming creates a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software."

Because Lee does not teach a "a pattern recognition element programmed for analyzing said first image signal of said portion of said shielding to determine the location of said portion of said shielding element," applicants submit that Lee does not teach the apparatus of claims 1 and 18 and their dependents. Thus, Lee does not anticipate amended claims 1 and 18.

The subject matter of the Lee patent and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Lee is therefore not prior art to applicants' claimed invention under 35 USC 103 in combination with 102(e).

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Because Lee does not anticipate the amended claims and Lee is not prior art under 35 USC 103, applicants submit that the claims are patentable over Lee and respectfully requests the application be allowed.

Respectfully submitted,

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